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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,169	02/19/2004	Shane D. Pannell	122308.00003	7168
26707 7590 01/30/2007 QUARLES & BRADY LLP RENAISSANCE ONE TWO NORTH CENTRAL AVENUE PHOENIX, AZ 85004-2391			EXAMINER KIM, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			3752	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,169	<b>Applicant(s)</b> PANNEL ET AL.	
	<b>Examiner</b> Christopher S. Kim	<b>Art Unit</b> 3752	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 54-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 54-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 14, 2006 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "walls of the second, solid tubing are made thinner at the pre-defined insertion points" recited in claim 54, 62 and 69; the "installer selectively forming the holes" recited in claims 54, 62 and 69; the "portable storage tank" recited in claims 54, 60 and 667 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 54-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 54 recites "...and pivot ninety (90) degrees..." Claim 60 recites "...and rotate ninety (90) degrees..." The structural elements are not commensurate in scope with the functional recitation. It is uncertain whether the claimed invention requires a

pivot or rotation joint, or it merely requires a pivot or rotation motion of a non-pivot/rotation joint structure.”

Claims 54, 62 and 69 recite “...an installer selectively forming the holes in the pre-defined insertion points...” It appears that the specification discloses the “installer” as a person. It is uncertain whether applicant is claiming a person or a process within an apparatus claim.

***Claim Rejections - 35 USC § 103***

6. Claims 54-56, 58-62, 64-69, 71-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manciet (6,463,694) in view of Wing (2,862,765), Vella (4,862,931) and Andrews (2,749,180).

Manciet discloses a chemical distribution system comprising:

- a first tubing 214;
- a second solid tubing 212;
- openings/outlets 902;
- a junction box 804;
- booster pump and pressure regulator 1304.

Manciet does not disclose the material and the pressure rating of the first and second solid tubing. Manciet discloses a working pressure of 23 psi. polyethylene, polyurethane, nylon and/or polypropylene are well known materials. Additionally, it is not uncommon to design fluid systems having a safety factor of 3. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have

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made the tubing of Manciet with polyethylene, polyurethane, nylon or polypropylene with a pressure rating of 60 psi to provide a safe corrosion resistant system.

Manciet also does not disclose the openings in the tubing to be 1 to 20 inches apart. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided openings 1 to 20 inches apart in the tubing of Manciet for even dispersion.

Manciet also does not disclose the tubing being attached to the exterior of the dwelling. Wing teaches tubings 42, 43 attached to the exterior of a dwelling 11, 13. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a tubing on the exterior of a dwelling in the device of Manciet as taught by Wing to provide insecticide to the surrounding areas of the dwelling.

Manciet also does not disclose the tubing having thinner walls at the outlets. Andrews teaches a tubing (see figure 15) having thinner walls 66 having outlets 15 and thicker walls 65. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided thinner walls with outlets and thicker bottom walls in the tubing of Manciet as taught by Andrews to help orient the tube (Andrews, column 5, lines 50-61).

Finally, Manciet does not disclose a quick-disconnect fitting and a lever arm. Vella discloses a junction box 11 having a lever arm 37-42 and a quick-disconnect fitting 35, 36. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the lever arm and quick-disconnect fitting of Vella

to the junction box of Manciet to connect to portable storage tanks that are not equipped with delivery lines.

The recitation "...the lever arm and quick-disconnect fitting are laid lengthwise, below the ground, within the junction box when not in use, and pivot ninety (90) degrees to a vertical position, above the ground..." is a functional recitation and adds no structure limitation.

Regarding claims 58, 64 and 71, Manciet in view of Wing, Vella and Andrews discloses the limitations of the claimed invention with the exception of the routing the second portion along fence pillars. Wing discloses, in column 5, lines 35-44, that nozzles may be positioned at any point and that the fog assembly may be associated with various types of buildings and vehicles, such as warehouses, garages, barns, dairies, airplanes, etc. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have routed the second tugging along fence pillars to control insect at fences.

7. Claims 57, 63 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manciet (6,463,694) in view of Wing (2,862,765), Vella (4,862,931) and Andrews (2,749,180) as applied to claims 54, 60 and 67 above, and further in view of Valiant (4,175,703).

Wing in view of Vella discloses the limitations of the claimed invention with the exception of the clamps.

Manciet in view of Wing, Vella and Andrews discloses the claimed invention with the exception of clamps. Clamps are well known in the art. Valiant discloses form

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fitting clamps 27 used to route conduit 20. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have used the claims of Valiant to route the tubing of Manciet in view of Wing, Vella and Andrews to prevent substantial harm to the appearance of the building (Valiant, column 1, lines 50-54).

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 54-73 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK